Supreme Court, U. S.
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In the Supreme Court of the United States

October Term, 197
No. 78-1433

FREDRIC CHUBB,
Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA,
Appellee

Appeal From the Superior Court of Pennsylvania

JURISDICTIONAL STATEMENT

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 197
No.

FREDRIC CHUBB,
Appellant

vs.

COMMONWEALTH OF PENNSYLVANIA,
Appellee

Appeal From the Superior Court of Pennsylvania

JURISDICTIONAL STATEMENT

The Appellant, FREDRIC CHUBB, submits herewith his jurisdictional statement as required by Rule 15 of the Rules of the Supreme Court of the United States.

OPINION BELOW

The orders of the Court of Common Pleas of Cumberland County dated November 30, 1977, denying Appellant's post-trial motions, and dated December 19, 1977, imposing sentence, are not reported in any official publication. These orders appear respectively at Appendix II, infra, p. 2a and pp. 3a-4a. The memorandum opinion of the Trial Judge is reported at 28 Cumberland Law Journal 47 and appears at Appendix II, infra, pp. 5a-10a. By its per curiam order entered without opinion on October 2, 1978, the Superior Court of Pennsylvania affirmed the judgment of December 19, 1977 of the Common Pleas Court. The order of the Superior Court, not yet officially reported, is unofficially reported at 395 A. 2d 964 and appears at Appendix III, infra, p. 11a. The Supreme Court of Pennsylvania, by its order entered December 20, 1978, denied Appellant's petition for allowance of appeal without delivering an opinion. The order of the Supreme Court of Pennsylvania is not reported in any official publication and notice of entry thereof is reproduced at Appendix IV, infra, p. 13a.

GROUNDS OF JURISDICTION

This was a criminal prosecution of Appellant by Appellee for violation of Section 2904 of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §2904, which resulted in conviction and sentence. Section 2904 appears infra at Appendix I, p. 1a. Appellant appealed to the Superior Court of Pennsylvania the order of the Court of Common Pleas of Cumberland County, Pennsylvania, of December 19, 1977, which sentenced Appellant, on the grounds that the trial judge misinterpreted and incorrectly applied Section 2904 to Appellant's case and that Section 2904 is invalid in that it violates the due process clause of the Fourteenth Amendment of the United States Constitution.

The order sought to be reviewed is the order of the Superior Court of Pennsylvania, entered October 2, 1978, affirming the December 19, 1977 order of the Court of Common Pleas of Cumberland County, Pennsylvania and upholding the constitutionality of the state statute. The Supreme Court of Pennsylvania denied Appellant's timely petition for allowance of appeal on December 20, 1978, thus rendering the October 2, 1978 order of the Superior Court of Pennsylvania the final judgment of the highest court of the state.

Jurisdiction on appeal is conferred here by 28 U.S.C. §1257 (2) which provides for review by appeal where the validity of a state statute is questioned on the ground of its being repugnant to the Constitution of the United States

and a final judgment has been rendered by the highest court of the state in favor of its validity. *Michigan-Wisconsin Pipeline Co. v. Calvert,* 347 U.S. 157 (1954). The Appellant had no right to appeal to the Pennsylvania Supreme Court the order entered by the Superior Court of Pennsylvania; review of all Superior Court decisions by the Pennsylvania Supreme Court is discretionary, 42 Pa. C.S.A. §724(a). Therefore, the denial by the Supreme Court of Pennsylvania on December 20, 1978 of Appellant's timely petition for allowance of appeal rendered the October 2, 1978 order of the Superior Court of Pennsylvania the final judgment of the highest court of the state, reviewable by appeal to your Honorable Court. *Michigan-Wisconsin Pipeline Co. v. Calvert,* supra; *Cuyahoga River Power Co. v. Northern Realty Co.,* 244 U.S. 300 (1917).

The period within which notice of appeal was required to be filed commenced on December 20, 1978, the date on which the Supreme Court of Pennsylvania denied the petition for allowance of appeal. *American R. Express Co. v. Levee,* 263 U.S. 19 (1923). Notice of appeal was timely filed with the Prothonotary of the Court of Common Pleas of Cumberland County, Pennsylvania on March 12, 1979, in accordance with Rule 12(1) of the Rules of the Supreme Court of the United States, and appears infra at Appendix V, pp. 14a-16a.

QUESTION PRESENTED

Is Section 2904 of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §2904, unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States?

STATEMENT OF THE CASE

Appellant married the former Sandra Gardner on January 20, 1974. Although the couple separated on May 2, 1974 when Sandra left the marital home, a male child was born to them on December 20, 1974, of which Appellant was the natural father. A dispute developed concerning the child's custody. Appellant, therefore, instituted a habeas corpus action in the Court of Common Pleas of Cumberland County, Pennsylvania, which resulted in the Court order of June 9, 1975 placing general custody in the mother and certain custody and visitation rights in Appellant. Both parents resided in Pennsylvania at that time.

After the court established custody and visitation, Appellant began to observe problems developing as the result of his pursuit of the rights of visitation. On one occasion, his wife's father met Appellant on the front porch of the former's home holding a gun (R. 34a). Sandra attempted to make his visits inconvenient by insisting upon trivial details of the child's care, i.e. how to change a diaper (R. 35a). Sandra and her sister went to Appellant's parents to complain about some torn rubber pants and a missing bottle (R. 39a). Sandra's brother confronted Appellant on one visit blocking his path while cursing and threatening him (R. 40a). Sandra frequently indicated to Appellant that the child was too ill to visit with him (R. 42a). Sandra gave Appellant prescription medicine for the child in an unlabeled bottle (R. 45a).

The child's doctor had been instructed not to share medical information with the Appellant (R. 45a, 54a). Appellant was discouraged by his prior legal counsel from bringing the matter back to court for further review (R. 46a, 47a).

As a result of this background, Appellant perceived that his contacts with the child were in "an air of tension so thick you could cut it with a knife" (R. 38a). He observed that the child's continued exposure to this tension "would create feelings in him like fear, confusion, anxiety, insecurity, the very things that once they are ingrained in a person it's nearly impossible to treat the matter" (R. 50a, 51a). His concerns were further observed: "But, I would develop a program like that if I were setting out to create a sociopath or character disorder, that's the way I would go about it and that's what was happening to my, our son. It was happening to him." (R. 51a)

On December 27, 1975, with the sincere belief that his action was necessary to preserve the child from danger to its welfare, Appellant left Pennsylvania with the child and established a residence for himself and the child in Florida. Appellant did not notify the natural mother of their whereabouts. After custody proceedings in Florida, the child was returned to the mother.

Criminal proceedings were instituted against the Appellant in the Court of Common Pleas of Cumberland County, Pennsylvania, in which Appellant was found guilty in a non-jury trial of violating Section 2904 of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §2904, which prohibits the taking of a child from the custody of its parent.

Subsection (b) of Section 2904 states, in part:

"Defenses. —It is a defense that:

(1) the actor believed that his action was necessary to preserve the child from danger to its welfare. . . ."

In addition to the factual background discussed above, the Appellant testified as follows concerning the reasons why he departed with the child.

"Because I felt his welfare was being endangered. Each and every time he would have or his father would have contact with him or try to have contact with him, not only did his father have to go through the stress, which I am capable of enduring quite a bit of stress, but less than a year-old baby. There is no way that a baby can endure that kind of tension and stress on a regular basis over a prolonged period of time without doing permanent damage. I am talking about psychological damage, emotional damage. That can't be undone. I was forced to choose between his welfare and Sandra's mental anguish, but there was no choice." (R. 46a).

"The boy as a baby was entitled to certain things even before he was born. One thing he was entitled to was peace. Another thing he was entitled to was an opportunity to develop an emotional bond with his parents, both parents.

"Now, I asked the Court for assistance so that he would have that opportunity because I knew, it isn't a father that needs a son, a father may want a son, a father may love a son and care about a son,

but it's the son who needs the father, and I knew that.

"From the very beginning before he was born, and I knew that I would run into the difficulties I have mentioned, but I asked the Court for help and what I got was Solomon's sword, an opportunity to participate at my son's destruction. And I could not, would not allow that to continue". (R. 51a, 52a).

The evidence concerning Appellant's belief that his violation of the custody order was necessary to preserve the child from danger to its welfare was not contradicted. In fact, the trial judge stated: "I have no trouble concluding and agreeing that Mr. Chubb's beliefs may have been sincerely held . . . ." (R. 56a).

After the trial judge found Appellant guilty of the offense, Appellant filed timely motions in arrest of judgment and for a new trial upon the grounds that the verdict was contrary to the weight of the uncontradicted evidence which showed that Appellant believed his action was necessary to preserve the welfare of the child (R. 75a) and that the verdict was contrary to law in that it disregarded the defense of Section 2904 (b) (1) of the Pennsylvania Crimes Code that Appellant believed his action was necessary to preserve the welfare of the child (R. 75a, 76a).

Not until the trial court filed its memorandum (Appendix II, infra, pp. 5a-10a) in support of its order of November 30, 1977 denying Appellant's post-trial motions was Appellant made aware of the trial court's determination that in order to assert the defense established under Section 2904 (b) (1) ". . . it must be shown that

the child's welfare was endangered, or at least that the actor *reasonably* perceived such a danger to the child's welfare" (emphasis in original) and that Appellant was convicted because "[n]o such showing was made in this case." (Appendix II, infra, p. 8a)

By order of the Court of Common Pleas of Cumberland County, Pennsylvania of December 19, 1977, Appellant was given a suspended sentence of two years probation, fined $500.00 and ordered to make restitution to his former wife in the amount of $3,315.10.

Appellant appealed the December 19, 1977 order of the Court of Common Pleas of Cumberland County, Pennsylvania, imposing sentence to the Superior Court of Pennsylvania by filing a notice of appeal with the Court of Common Pleas of Cumberland County, Pennsylvania, on January 16, 1978 (R. 7a). The appeal was based on two grounds raised in the brief Appellant filed with the Superior Court. The first ground was that the trial court disregarded Appellant's defense under Section 2904(b)(1) of the Pennsylvania Crimes Code in requiring proof of a reasonable belief or actual danger (Superior Ct. Brief, p. 2). The second ground was that, as interpreted and applied by the trial court, Section 2904 is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, since it does not state that the defense requires a reasonable belief or actual danger (Superior Ct. Brief, p. 2).

By its per curiam order entered October 2, 1978 (Appendix III, infra, p. 11a), without opinion, the Superior Court of Pennsylvania affirmed the order of the

Court of Common Pleas and thus upheld the constitutionality of Section 2904 and affirmed the trial court's interpretation that Subsection (b)(1) of the statute requires a reasonable belief or actual danger to the child. The order of the Superior Court of Pennsylvania became a final order of the highest court in the state when the Supreme Court of Pennsylvania denied Appellant's timely filed petition for allowance of appeal on December 20, 1978 (Appendix IV, p. 13a). Appellant raised the same issues in his petition for allowance of appeal that were raised before the Superior Court of Pennsylvania (Petition for Allowance of Appeal, p. 2).

Notice of appeal to the Supreme Court of the United States was filed with the Prothonotary of the Court of Common Pleas of Cumberland County, Pennsylvania on March 12, 1979 (Appendix V, infra, pp. 14a-16a).

FEDERAL QUESTION IS SUBSTANTIAL

The federal question raised by Appellant here and at every stage below is whether Section 2904 of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §2904, is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States. Section 2904 punishes criminally the knowing or reckless taking of a child under the age of eighteen years from the custody of its parent. However, Subsection (b) (1) of Section 2904 states that it is a defense that "the actor believed that his action was necessary to preserve the child from danger to its welfare. . . ."

Appellant reasonably construed this statute to mean that if a person sincerely believes, whether or not his belief is reasonable, that his act is necessary to preserve his child from danger to its welfare, whether or not danger actually exists, his act is not a violation of Section 2904. Appellant's construction was quite reasonable in light of Section 1928 of the Pennsylvania "Statutory Construction Act of 1972", 1 Pa. C.S.A. §1928, which requires strict construction of penal statutes, and Section 1921 (b) of that same Act, 1 Pa. C.S.A. §1921 (b), which states: "when the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

Although the testimony was uncontradicted that Appellant sincerely believed that his action in taking the child from the custody of its mother was necessary to preserve the child from danger to its welfare (R. 46a, 51a, and 52a) and, although the trial judge stated: "I have no trouble concluding and agreeing that Mr. Chubb's beliefs may have been sincerely held . . ." (R. 56a), the trial court found the Appellant guilty on the basis of an interpretation of the statute which differed from Appellant's. The trial court, in its memorandum, stated, that to establish the defense of Section 2904 (b) (1): "We conclude that it must be shown that the child's welfare was endangered, or at least that the actor *reasonably* perceived such a danger to the child's welfare" (emphasis in original) (Appendix II, infra, p. 8a). Appellant thus was convicted by the trial judge because Appellant failed to prove that his belief was reasonable or that the child was in actual danger.

The Superior Court of Pennsylvania, in affirming the trial court's order imposing sentence, adopted the trial court's interpretation of the statute since Appellant raised the issue of the proper interpretation of the statute in his appeal to the Superior Court (Superior Ct. Brief, p. 2). The Supreme Court of Pennsylvania, in denying Appellant's petition for allowance of appeal in which the issue of the proper interpretation of the statute was raised (Pet. for Allowance of Appeal, p. 2), gave tacit approval to the trial court's interpretation.

Appellant would continue to argue that his interpretation that the statutory defense requires only a sincere belief is correct and that the Pennsylvania courts have incorrectly construed the statute and rewritten it to read as follows:

> "(b) Defenses. —It is a defense that
>
> (1) the actor believed that his action was necessary to preserve the child from *actual* danger

> to its welfare or that *the actor reasonably perceived such a danger to its welfare.*"

However, Appellant recognizes that this Court is bound by the construction of the statute given by the state courts. *Albertson v. Millard,* 345 U.S. 242 (1953); *Erie v. Tompkins,* 304 U.S. 64 (1938).

Appellant, here, contends that the statute, as construed by the Pennsylvania courts below, is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States. This issue was raised by Appellant before the Superior Court of Pennsylvania (Superior Ct. Brief, p. 2) and in Appellant's petition for allowance of appeal to the Supreme Court of Pennsylvania (Pet. for Allowance of Appeal, p. 2).

Your Honorable Court, in the matter of *Grayned v. City of Rockford,* 408 U.S. 104, 108 (1972), said:

> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. . . . [W]e insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."

In *Connally v. General Construction Co.,* 269 U.S. 385, 391 (1926), this Court stated the following:

> "[T]he terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. . . . [A] statute which either forbids or requires the doing of an act

> in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Section 2904 does not inform a person of ordinary intelligence that he has committed a crime if he believes his action is necessary to preserve the child from danger to its welfare but the belief is unreasonable or the danger not actual. The statute informs the person of ordinary intelligence that if he believes his act is necessary to preserve the child from danger then his act is not a crime. Consequently, the imposition of punishment where the belief is sincere, though not reasonable, is a denial of due process of law. Even were Appellant to concede that the construction given by the Pennsylvania courts is reasonable, it is clear that there are two reasonable constructions of the statute, and so "men of common intelligence must necessarily guess at its meaning and differ as to its application." Therefore, the statute is unconstitutionally vague in violation of the due process clause under the two cases cited above.

The federal question here, whether the statute under which Appellant was convicted and punished denies Fourteenth Amendment due process for vagueness, is a substantial one that has not previously been decided. If a decision is rendered in Appellant's favor his conviction will be overturned and the sentence and fine will be set aside. Not only will this remove the stigma of a criminal conviction, it will protect Appellant from further criminal punishment since the period of his probation does not end until December 19, 1979. The case will

not be moot even if Appellant completes his sentence by the time a final decision in this Court is reached. "[A] criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction." *Sibron v. New York,* 392 U.S. 40, 57 (1968). This Court pointed out that collateral consequences can be imposed under Pennsylvania law in that in "future state criminal proceedings . . . a conviction may be relevant to setting bail, length of sentence, and the availability of probation." *Pennsylvania v. Mimms,* 434 U.S. 106, 108 n. 3 (1977). See 18 Pa. C.S.A. §§1321, 1322, 1331, 1332 and Pa. R. Crim. P. 4004.

CONCLUSION

Appellant submits that this appeal brings before the Court a substantial federal question which requires plenary consideration, with briefs on the merits and oral argument for its resolution.

Respectfully submitted,

RICHARD C. SNELBAKER
Attorney for Appellant

APPENDIX I

18 Pa. C.S.A., §2904. Interference with custody of children

(a) Offense defined. —A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parent, guardian or other lawful custodian, when he has no privilege to do so.

(b) Defense. —It is a defense that:

(1) the actor believed that his action was necessary to preserve the child from danger to its welfare; or

(2) the child, being at the time not less than 14 years old, was taken away at its own instigation without enticement and without purpose to commit a criminal offense with or against the child; or

(3) the actor is the child's parent or guardian or other lawful custodian and is not acting contrary to an order entered by a court of competent jurisdiction.

(c) Grading. —The offense is a misdemeanor of the second degree unless the actor, not being a parent or person in equivalent relation to the child, acted with knowledge that his conduct would cause serious alarm for the safety of the child, or in reckless disregard of a likelihood of causing such alarm, in which case the offense is a misdemeanor of the first degree.

1972, Dec. 6, P. L. , No. 334, §1, eff. June 6, 1973.

Order, November 30, 1977

APPENDIX II

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY,
PENNSYLVANIA
CRIMINAL ACTION

No. 47 Criminal Action 1976

COMMONWEALTH OF PENNSYLVANIA

vs.

FREDERIC CHUBB,

Defendant

ORDER

AND NOW, to wit, November 30, 1977, the defendant's post trial motions are denied and he is directed to appear for sentencing at 11:30 a.m. on Monday, December 19, 1977.

(s) William W. Caldwell
William W. Caldwell, *Judge*
12th Judicial District,
Specially Presiding

Order, December 19, 1977

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY,
PENNSYLVANIA

47 Criminal 1976

Charge: Interference With Custody of Children
Affiant: Cpl. Eugene Purcell

COMMONWEALTH

vs.

FREDRIC CHUBB

Re: Sentence

ORDER OF COURT

AND NOW, December 19, 1977 at 11:50 a.m., sentence is suspended under condition the defendant be placed on a period of probation under the supervision of the Cumberland County Probation Department for a period of two years. A condition of the probation is that the defendant pay the sum of $500.00 to Cumberland County and that he make restitution to Sandra Chubb in the sum of $3,315.10,

Order, December 19, 1977

It is further directed that the sum of $3,300.00 be paid to the Probation Office this date and that the balance of restitution in the amount of $15.10 plus the costs and the sum to the use of the County to be liquidated and be paid in full six months from today's date.

By the Court,
William Caldwell, *J.*

Memorandum

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY,
PENNSYLVANIA
CRIMINAL ACTION

No. 47 Criminal Action 1976

COMMONWEALTH OF PENNSYLVANIA

vs.

FREDERIC CHUBB,

Defendant

MEMORANDUM

Defendant was charged with interference with custody of children, under Section 2904 of the Crimes Code of Pennsylvania, 18 C.S.A. 2904. He was tried on October 14, 1977, in a non-jury proceeding, was found guilty, and has filed a motion in arrest of judgment.

The defendant is the father of Jamie Chubb who was born on December 20, 1974. Prior to the child's birth, the defendant and his wife had separated. On June 9, 1975, custody of Jamie was formally awarded in this

court to his mother and the defendant was given visitation. On December 27, 1975, the defendant took the child on a regularly scheduled visitation and did not return him to the mother. The whereabouts of the father and child remained unknown for the next sixteen months, until detectives, hired by the mother, located the defendant and his child in Florida on May 12, 1977.

The only defense offered by defendant is a statutory one. Subsection (b) (1) of Section 2904 of the Code provides that "it is a defense that the actor believed that his action was necessary to preserve the child from danger to its welfare." Defendant contends that he believed psychological, emotional or social damage was being done his one-year-old son because of the "atmosphere" in the mother's family home, and that because of this belief he is not guilty of violating the statute. He argues that the sole remedy of the mother for his actions is a petition for contempt in the custody proceeding.

This is a case of first impression, but we concluded at trial that a dual remedy exists under the facts before us: a criminal charge under the Code or a contempt proceeding in the custody case. It is our judgment that the Code section was intended to afford a new remedy in a situation such as this and to provide criminal penalties for persons who take the law into their own hands.

Traditionally, our courts have been unwilling to impose criminal penalties upon a parent who removes his child from the possession of the other parent. Commonwealth v. Myers, 146 Pa. 24, 23 A. 164 (1892); Burns v. Commonwealth, 129 Pa. 138, 18 A. 756 (1889). But a court decree conferring permanent custody will subject

an abducting parent to kidnapping charges. See, generally 1 Am. Jur. 2d, Abduction—Kidnapping §19 and cases cited therein. The rationale in such cases is that a custody decree divests the parent of certain rights and subjects him to the same liability as a third person. Lee v. People, 127 P. 1023 (1912). No Pennsylvania decision has gone this far, presumably because the primary purpose of kidnapping statutes has been stated to be ". . . to protect parental and other lawful custody of children against the greed and malice of the kidnapper; not to punish their natural guardian for asserting his claim to . . . possession and control . . .", Burns, supra, at 145. We conclude the legislature determined to change this situation, however, and believe the grading section of the offense confirms our analysis that parents can be subject to criminal penalties under proper circumstances. The offense is graded as a second degree misdemeanor but is raised to first degree where a non-parent is involved and other factors are presented. This clearly indicates to us that parents were intended to be within the scope of the basic offense.

Section 2904 of the Code is derived from Section 212.4 of the Model Penal Code. The comment of the Joint State Government Commission concerning this section is further support for our determination that the Act applies to a parent who defies an existing custody order:

> "Although this section is somewhat similar to kidnapping, it is intended to protect parental custody from unlawful interruption, even when the child is a willing participant in the interference with custody. The offender under this section, as distin-

guished from the kidnapper, may be the parent or relative of the child. Removal of the child for a brief period would not be covered by this section. However, as intimated above, *this section would apply to a parent who wilfully defies a custody order by taking the child from the parent who was awarded custody.*" (Emphasis added.)

See, Toll—Pa. Crimes Code Annotated, pages 347-8.

We further concluded that the statutory defense contemplates a more imminent or present danger to a child's welfare, and the facts of a particular situation must warrant interference with custody before there is an opportunity to pursue the usual avenues of redress. In a nutshell defendant argues that since he believed his child's welfare was endangered, he cannot be convicted. If defendant's position is correct no one could be convicted of this offense if he simply states that he believed his action was necessary to preserve the child from a "danger to its welfare." We do not believe this to be a correct analysis of the statute. We conclude that it must be shown that the child's welfare was endangered, or at least that the actor *reasonably* perceived such a danger to the child's welfare.

No such showing was made in this case. The defendant's explanation for taking his son without notice and secreting him in Florida was his apprehension over the long-term psychological damage that he predicted would occur to his son from living in the mother's parent's home. He experienced tension in this home when he would go there to exercise visitation privileges, and he considered his wife and in-laws unsophisticated, unedu-

cated people who were creating a situation which he described as detrimental to the development of his son. The exact nature of the problem to which he referred was never satisfactorily articulated and consisted of his own perceptions of what was harmful. No physical abuse was alleged and no independent testimony was offered to corroborate defendant's notions of psychological harm. Our view of his testimony was that his conclusions were unconvincing if not unfounded.

Although defendant has no doubt been able to rationalize the seriousness of his act, upon reflection we must indicate our doubt of his credibility when he stated that he thought his child's emotional welfare was in danger. Our doubt arises from defendant's actions, which belie his experience, education and training. Defendant is a college graduate with a background in guidance and counseling. For six years prior to the offense he served as a probation officer in Cumberland County and well knew the methods by which children can be protected from actual dangers, whether physical or otherwise. Just six months prior to his taking the child he consented to his wife being given legal custody of his son in a formal court proceeding, and did not raise the concerns now being voiced. No later application was made to bring his concerns before the court that had granted custody and his counsel advised him that any such efforts would in all probability be unsuccessful. Defendant's solution to the problem, in hiding a child from his mother for a year and one-half, displays his callousness and lack of real concern for anyone but himself, and we view his act as little more than a presumptuous and calculated violation of a custody order and the law, motivated by his self-appointed

role as sole judge of his son's future. We find no merit in the defense presented and by an Order entered herewith are denying his post trial motions.

(s) William W. Caldwell
William W. Caldwell, *Judge*
12th Judicial District,
Specially Presiding

Date: November 30, 1977

APPENDIX III

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 739 October Term, 1978

COMMONWEALTH OF PENNSYLVANIA

vs.

FREDRIC CHUBB,

Appellant

Appeal from the Judgment of Sentence of the Court of Common Pleas, Criminal Division, of Cumberland County, at No. 47 of 1976.

Before: Van Der Voort, Watkins and Montgomery, JJ.

PER CURIAM, Filed Oct. 2, 1978:

Judgment of sentence affirmed.

Order and Judgment of Superior Court

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 739 October Term, 1978

COMMONWEALTH OF PENNSYLVANIA

vs.

FREDRIC CHUBB,

Appellant

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of CUMBERLAND County be, and the same is hereby AFFIRMED.

By the Court:
(s) J. Haniel Henry
J. Haniel Henry
Acting Prothonotary

Dated: October 2, 1978

Notice of Order of Supreme Court

APPENDIX IV

SUPREME COURT OF PENNSYLVANIA
Eastern District

Sally Mrvos
Prothonotary
Catherine E. Lyden
Deputy Prothonotary

456 City Hall
Philadelphia, 19107
(215) 686-3581/84

December 26, 1978

Richard C. Snelbaker, Esq.,
44 West Main Street
Mechanicsburg, Pa. 17055

In re: Commonwealth of Pennsylvania
v. Fredric Chubb, Petitioner.
No. 3874 Allocatur Docket

Dear Mr. Snelbaker:

This is to advise you that on December 20, 1978 the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter.

Very truly yours,
(s) Sally Mrvos
Sally Mrvos
Prothonotary

SM:mb
CC: Edgar B. Bayley, Esq.

APPENDIX V

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY,
PENNSYLVANIA

Criminal Action
No. 47 Criminal 1976

COMMONWEALTH OF PENNSYLVANIA,
Appellee

vs.

FREDRIC CHUBB,
Appellant

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that FREDRIC CHUBB, the above named Appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Superior Court of Pennsylvania entered October 2, 1978 which affirmed the judgment of sentence.

The Supreme Court of Pennsylvania entered its Order denying Appellant's Petition for Allowance of Appeal on December 20, 1978.

This appeal is taken pursuant to United States Code Title 28, Section 1257 (2).

Snelbaker, McCaleb & Elicker

By (s) Richard C. Snelbaker
Richard C. Snelbaker
44 West Main Street
Mechanicsburg, Pennsylvania
17055
Telephone: (717) 697-8528
Attorneys for Appellant

March 12, 1979

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Notice of Appeal upon the attorney for the Appellee, Commonwealth of Pennsylvania, by mailing the same to him by first class mail, postage prepaid, to the following address:

Edgar B. Bayley, Esquire
District Attorney
Cumberland County Court House
Carlisle, Pennsylvania 17013

I further certify that all parties required to be served with this document have been served.

(s) Richard C. Snelbaker
Richard C. Snelbaker
Attorney for Appellant
44 West Main Street
Mechanicsburg, Pennsylvania
17055
Telephone: (717) 697-8528

March 12, 1979